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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,080	02/27/2002	Paul D. Unger	TOR6712	5420

7590 04/07/2004

LINGBECK PATENT LAW OFFICE
P.O. BOX 500
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EXAMINER

LEWIS, KIM M

ART UNIT PAPER NUMBER

3743

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,080

Applicant(s)

UNGER ET AL

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Detailed Action.

DETAILED ACTION

Summary

1. The amendment filed on 1/23/04 has been received and made of record in the application file wrapper. The specification and claim 5 have been amended, and claims 1-4 have been cancelled as requested.
2. Claims 5 and 6 are pending in the instant application.

Claim Objections

3. Claim 5 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicants are required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. More specifically, the claim 5 is dependent upon cancelled claim 4. However, since the applicants in the remarks section of the amendment filed on 1/23/04 has indicated that claim 5 is rewritten as a new base claim, the examiner is examining the claim as if it is an independent claim.

Claim Rejections - 35 USC § 112

4. Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the metes and bounds of claim 5

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are indefinite in that it depends on canceled claim 4. As stated above, the examiner will examine the claim as if it is an independent claim.

Claim 6 is necessarily rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,176,664 ("Kalish") in view of U.S. Patent No. 6,171,604 ("Mousa").

As regards claim 5, Kalish substantially discloses all features of applicants' invention including a support strip of material (backing strip) having a body-attaching side and an adhesive (6) disposed about and upon said body attaching side, the support strip being made of plastic and may have perforations therethrough. Kalish also discloses that a type of support strip can be MICROPORE 3M surgical tape, which is inherently flexible (col. 5, lines 18-23 and col. 5, lines 39-50).

Further disclosed is pad member (gauze10) centrally attached upon the body attaching side of the support strip, at least one wound-healing agent disposed on the pad member (col. 5, lines 24-29) in an oil or wax base and protective strips (12, 14) removably disposed over said body attaching side including the pad member and the at least one wound healing agent (col. 5, lines 30-36 and Fig. 2).

Kalish fails to teach the wound-healing agent is a syrupy substance known as honey. However, Mousa discloses honey preparations, which include whole honey (syrupy honey) and beeswax for use as therapeutic topical treatments (col. 3, line 44- col. 4, line 18).

It would have been obvious to one having ordinary skill in the art to substitute the active agent in the oil or wax base disclosed in Kalish for the active agent (honey and beeswax) disclosed in Mousa, since it is known from Mousa that honey is effective in

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treating a wide range of conditions including, but not limited to, burns, wounds, cold sores, viral infections, bacterial infections, fungal infections, acne, psoriasis, allergies, rashes, skin dryness dermatitis, poison ivy insect bites, and similar skin conditions (col. 3, lines 1-10).

Additionally, the applicant should note that beeswax is a wound sealing wax in that it can be used to seal a wound.

As regards claim 6, note the overlapping of the protective strips in Fig. 2. Additionally, the applicants should note that Webster's II New Riverside University Dictionary defines fabric as "1. [a] material structure of connected parts." In this case, the parts of the protective strip are paper and the coating of polypropylene (col. 6, lines 35-37).

Response to Arguments

9. Applicant's arguments with respect to claims 5 and 6 have been considered but are moot in view of the new ground(s) of rejection. The examiner would, however, like to point out that although Mousa does not disclose placing the active agent, honey, on gauze, one having ordinary skill in the art would have found it obvious to place **any** active agent that produces a healing effect in an oil or wax base and impregnate the gauze of Kalish. Such a modification requires only routine skill in the art.

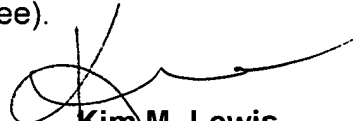
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is

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703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703.308.0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis
Primary Examiner
Art Unit 3743

kml
April 2, 2004